

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:11cv126**

LAWRENCE J. TRABER and)
ELGE L. TRABER,)
)
Plaintiffs,)
)
v.)
)
MORTGAGE ELECTRONIC)
REGISTRATION SYSTEM, INC., et al.)
)
Defendants.)
)

ORDER

Pending before the Court are Plaintiffs' Motions for Default Judgment [# 15 & # 28]. Plaintiffs move for the entry of default judgment against Defendants Mortgage Electronic Registration Systems, Inc. and Mid Atlantic Financial Services Inc. for failing to answer or respond to their Complaint within the time periods set forth in Rule 12 of the Federal Rules of Civil Procedure. Upon consideration of the record in this case, the Court **DENIES without prejudice** Plaintiffs' motions [# 15 & # 28].

I. Analysis

As a threshold matter, both motions fail to comply with the requirements of the Local Rules, which require the filing of a motion and separate brief. LCvR 7.1(C). In addition, both motions for default judgment are premature as the Clerk has not yet entered default against Defendants. See 10A Charles Alan Wright, Arthur R. Miller, Mary Kay Kane & Richard L. Marcus, Federal Practice and

Procedure § 2682 (3d ed. 2007). Moreover, the entry of default against Defendant Mortgage Electronic Registration Systems, Inc. would be improper as it filed a Motion to Dismiss pursuant to Rule 12 in lieu of filing an answer. If the Court denies the pending Motions to Dismiss, then Defendants will then be required to file and serve an Answer.

Finally, although Defendant Mid Atlantic Financial Services Inc. has not answered or otherwise responded to the Complaint, Plaintiffs must first file a motion requesting that the Clerk enter default pursuant to Rule 55(a) prior to moving for the entry of default judgment. Plaintiffs' motion must set forth by affidavit or otherwise that service was perfected on Defendant Mid Atlantic Financial Services Inc. in a manner allowable under Rule 4 of the Federal Rules of Civil Procedure. Once Plaintiffs makes this showing and the Clerk enters default against Defendant Mid Atlantic Financial Services Inc., Plaintiffs may then file a motion and brief in support demonstrating that the entry of default judgment is appropriate pursuant to Rule 55(b). Accordingly, the Court **DENIES without prejudice** Plaintiffs' motions.

II. Conclusion

The Court **DENIES without prejudice** the Motions for Default Judgment [# 15 & # 28].

Signed: July 24, 2012

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United States Magistrate Judge

